No. 87-1560

(3)

MOTION FILED
APR 18 1988

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MERCEDES-BENZ OF NORTH AMERICA, INC.,

Petitioner,

v.

METRIX WAREHOUSE, INC. and CARL SCHWARTZ,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION OF AUTOMOBILE IMPORTERS OF AMERICA, INC. AND MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC. FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE PETITION

Charles H. Lockwood, II
AUTOMOBILE IMPORTERS OF AMERICA, INC.
1725 Jefferson Davis Highway
Suite 1002
Arlington, Virginia 22202
(703) 979-5550

William H. Crabtree
MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.
300 New Center Building
Detroit, Michigan 48202
(313) 872-4311

Of Counsel

Ira M. Millstein
Counsel of Record

WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Counsel for Amici Curiae

April 18, 1988

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1560

MERCEDES-BENZ OF NORTH AMERICA, INC.,

Petitioner,

v.

METRIX WAREHOUSE, INC. and CARL SCHWARTZ,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION OF AUTOMOBILE IMPORTERS OF AMERICA, INC. AND MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC. FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 36 of the Rules of this Court, Automobile Importers of America, Inc. ("AIA") and Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") respectfully move for leave to file the accompanying brief as *amici curiae* in support of the petition for a writ of certiorari. Counsel for petitioner has consented to the filing of this brief; counsel for respondents has not.

INTERESTS OF THE *AMICI*

AIA is a trade association organized as a non-profit District of Columbia corporation. Its members[1] are either foreign motor vehicle manufacturers, United States corporate affiliates of such manufacturers, or United States importers authorized by such manufacturers. MVMA is a trade association organized as a not-for-profit New York corporation and composed of companies engaged in the manufacture and sale of motor vehicles in the United States.[2]

Both AIA and MVMA have a direct and substantial interest in ensuring that their members are able to respond to the demands of a vigorously competitive marketplace by, among other things, creating distribution and service networks that generate market efficiencies, promote brand awareness, foster consumer goodwill and maintain product quality and safety.

Motor vehicles are complex, costly, and long-lasting products which require sophisticated pre- and post-sale servicing. The manufacturer's relationship and responsibility to the consumer lasts for the life of the car. After the purchase, the consumer wants to have reliable and convenient service available. The

---

1 The members of AIA are: American Honda Motor Company, Inc.; American Isuzu Motors, Inc.; BMW of North America, Inc.; Fiat Auto U.S.A., Inc./Alfa Romeo, Inc.; Hyundai Motor America, Inc.; Jaguar Cars Inc.; Mazda Motors of America (Central), Inc.; Mitsubishi Motor Sales Corporation; Nissan Motor Corporation, USA; Peugeot Motors of America, Inc.; Porsche Cars North America, Inc.; Regie Nationale des Usines Renault; Rolls-Royce Motor Cars Inc.; Saab-Scandia of America, Inc.; Subaru of America, Inc.; Suzuki of America Automotive Corporation; Toyota Motor Sales, Inc.; Volvo North America Corporation; and Yugo America, Inc.

2 The members of MVMA are: Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of America Manufacturing, Inc.; M.A.N. Truck & Bus Corporation; Navistar International Corporation; PACCAR Inc.; and Volvo North America Corporation.

manufacturer strives to meet these consumer needs to maintain consumer goodwill and thus achieve sales success.

In the decision below (App. at 1a-28a), the Court of Appeals for the Fourth Circuit upheld a treble-damage verdict against an automobile distributor that required its authorized dealers to use factory-authorized replacement parts for repair and servicing of the distributor's vehicles when such parts were necessary to the mechanical operation of those vehicles. The court concluded that, notwithstanding the distributor's legitimate business purposes for imposing the restraint, the jury was free to reject the proffered business justification defense because, in the court's view, there was evidence to suggest that the distributer might have achieved its valid business purposes by "less restrictive" means.

The decision below exposes automobile manufacturers and distributors to legal uncertainties that threaten to chill their efforts to develop and maintain the efficient and dependable dealership service networks so crucial to their businesses. This confusion is underscored by a subsequent decision of the Ninth Circuit upholding a jury verdict that found the same restriction to be legally justified by the very same commercial considerations that had been brushed aside in the jury verdict upheld by the Fourth Circuit.

AIA and MVMA submit that review by this Court would provide much-needed clarification of the legal standard applicable to business justifications proffered by manufacturers and distributors in defense of alleged tying restraints upon authorized dealers. Moreover, this Court should grant certiorari to consider whether, in light of contemporary antitrust jurisprudence, a business justification defense should be available as a matter of law for alleged tying restraints that (i) are shown to be reasonably related to legitimate business objectives, and (ii) do not restrict freedom of a *consumer* to deal with alternative outlets for the products or services involved.

For these important reasons, AIA and MVMA respectfully request that the Court accept and consider the accompanying brief.

Respectfully submitted,

Ira M. Millstein
Counsel of Record

Irving Scher
Michael A. Epstein
Martin S. Hyman
Holly J. Gregory
WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Counsel for Amici Curiae

Charles H. Lockwood, II
AUTOMOBILE IMPORTERS
OF AMERICA, INC.
1725 Jefferson Davis Highway
Suite 1002
Arlington, Virginia 22202
(703) 979-5550

William H. Crabtree
MOTOR VEHICLE MANUFACTURERS
ASSOCIATION OF THE UNITED STATES, INC.
300 New Center Building
Detroit, Michigan 48202
(313) 872-4311

Of Counsel

April 18, 1988

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
INTERESTS OF THE *AMICI*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	2
I. THE DECISION OF THE COURT OF APPEALS HAS RESULTED IN INDUSTRY-WIDE CONFUSION	2
II. THE COURT SHOULD RECONSIDER THE "LESS RESTRICTIVE ALTERNATIVE" STANDARD IN LIGHT OF CONTEMPORARY ANTITRUST JURISPRUDENCE	5
CONCLUSION	8

TABLE OF AUTHORITIES

Cases: PAGE

American Motor Inns, Inc. v. *Holiday Inns, Inc.*, 521 F.2d 1230 (3d Cir. 1975) 4

Continental T.V., Inc. v. *GTE Sylvania Inc.*, 433 U.S. 36 (1977) 7

Fortner Enters., Inc. v. *United States Steel Corp.* ("*Fortner I*"), 394 U.S. 495 (1969) 5, 6

IBM Corp. v. *United States*, 298 U.S. 131 (1936) 6

International Salt Co. v. *United States*, 332 U.S. 392 (1947) 5, 6

Jefferson Parish Hosp. Dist. No. 2 v. *Hyde*, 466 U.S. 2 (1984) 6

Monsanto Co. v. *Spray-Rite Service Corp.*, 465 U.S. 752 (1984) 7

Mozart Co. v. *Mercedes-Benz of North America, Inc.*, 833 F.2d 1342 (9th Cir. 1987) 4

National Collegiate Athletic Ass'n v. *Board of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984) 5

Pick Mfg. Co. v. *General Motors Corp.*, 80 F.2d 641 (7th Cir. 1935), *aff'd per curiam*, 299 U.S. 3 (1936) 7

Reiter v. *Sonotone Corp.*, 442 U.S. 330 (1979) 5

Standard Oil Co. v. *United States* ("*Standard Stations*"), 337 U.S. 293 (1949) 5, 6

United States Steel Corp. v. *Fortner Enters., Inc.* ("*Fortner II*"), 429 U.S. 610 (1977) 6

PAGE

United States v. *Loew's Inc.*, 371 U.S. 38 (1962) 5

Statutes:

15 U.S.C.A. §§ 1400 *et seq.* (1982 & Supp. 1987)..... 2

15 U.S.C.A. §§ 2301 *et seq.* (1982) 3

42 U.S.C.A. §§ 7521 *et seq.* (1983) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1560

MERCEDES-BENZ OF NORTH AMERICA, INC.,

Petitioner,

v.

METRIX WAREHOUSE, INC. and CARL SCHWARTZ,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AUTOMOBILE IMPORTERS OF AMERICA, INC. AND MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC. AS *AMICI CURIAE* IN SUPPORT OF THE PETITION

INTERESTS OF THE *AMICI*

Automobile Importers of America, Inc. ("AIA") and Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") respectfully refer the Court to the interests articulated in their Motion for Leave to File Brief as *Amici Curiae*, to which this brief is attached.

SUMMARY OF ARGUMENT

The questions presented in the petition are worthy of review by this Court because they involve important legal issues with broad commercial implications. Among these issues is the viability of the "less restrictive alternative" rationale as a basis for negating an otherwise valid business justification for a supplier's requirement that its authorized dealers use only factory-authorized replacement parts in the repair and servicing of technologically sophisticated products. As *amici curiae*, AIA and MVMA will emphasize: the industry-wide confusion created by the court of appeals' application of the "less restrictive alternative" standard; and the need for this Court to consider whether, in light of contemporary antitrust jurisprudence, a business justification defense should be available as a matter of law for alleged tying restraints that (i) are shown to be reasonably related to legitimate business objectives, and (ii) do not restrict freedom of a *consumer* to deal with alternative outlets for the products or services involved.

ARGUMENT

I. THE DECISION OF THE COURT OF APPEALS HAS RESULTED IN INDUSTRY-WIDE CONFUSION

Manufacturers and distributors of technologically sophisticated products, such as automobiles, are constantly faced with the challenge of maintaining consumer goodwill and assuring continued product quality and safety. To meet this challenge, and thereby ensure their status as viable competitors, automobile companies require their dealers to conform to certain product service standards.[1] These standards require authorized

---

1 Indeed, the ability of a manufacturer to comply with various warranty, safety and emission control laws, *see, e.g.*, National Traffic and Motor Vehicle Safety Act, 15 U.S.C.A. §§ 1400 *et seq.* (1982 & Supp. 1987) (safety, recall, notification, and repair requirements);

dealers to maintain factory-authorized service departments staffed by factory-trained technicians who may, in some cases, be obligated to use factory-authorized replacement parts in connection with the repair and servicing of the manufacturer's vehicles. Consumer choice is not affected by these controls on a supplier's authorized dealer network. Consumers who wish to deal with other technicians, or to accept other replacement parts, have the option of patronizing repair facilities outside that limited network.

The court below did not question the validity of any of the defendant automobile distributor's proffered business justifications for imposing an authorized replacement parts requirement upon its network of authorized dealers.[2] It nevertheless affirmed a treble-damage jury verdict in favor of the plaintiff—a supplier of "other" replacement parts—by suggesting that the jury might have concluded that such valid business purposes could have been achieved by "less restrictive" means, and by speculating about certain "less restrictive" means that the defendant might have utilized.

By relying upon conjecture and hindsight as bases for negating a recognized defense founded on demonstrably legitimate business concerns, the decision below creates a confusing and dangerous precedent that threatens to chill the efforts of automobile companies and other companies engaged in the production, sale and maintenance of technologically sophisticated products to develop the efficient and dependable dealer-service networks so crucial to their success and so promotive of con-

---

Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C.A. §§ 2301 *et seq.* (1982) (consumer warranty requirements); Clean Air Act, 42 U.S.C.A. §§ 7521 *et seq.* (1983) (emission control requirements), is largely dependent upon the maintenance of an efficient dealer service network.

2 These justifications included the need to: assure quality control in connection with parts necessary to the mechanical operation of the vehicle; prevent "free riding" by dealers seeking to increase profits by using inferior, untested parts; and discourage practices that could result in consumer deception. (App. at 13a-16a.)

sumer peace of mind. It would be difficult to envision any restraint—no matter how pro-competitive its purpose—for which some "less restrictive" alternative could not be hypothesized.

The antitrust laws should not be applied in such a way as to transform automobile manufacturers and distributors into "guarantors that the imaginations of lawyers could not conjure up some method of achieving [a valid business purpose] that would result in a somewhat lesser restriction of trade." *American Motor Inns, Inc.* v. *Holiday Inns, Inc.*, 521 F.2d 1230, 1249 (3d Cir. 1975). Nor should those laws be construed to permit factfinders to impose treble-damage liability by "second-guessing business judgments as to what arrangements would or would not provide 'adequate' protection for legitimate commercial interests." *Id.* at 1249-50.

The confusion engendered by the decision below is underscored by the subsequent holding in *Mozart Co.* v. *Mercedes-Benz of North America, Inc.*, 833 F.2d 1342 (9th Cir. 1987). In that later decision, the Court of Appeals for the Ninth Circuit affirmed a jury verdict in favor of the same defendant on a tie-in claim involving the same dealership agreement, clause and proffered defenses as those at issue in the instant case. In both *Mozart* and *Metrix*, the juries were instructed that the defendant could not avail itself of the business justification defense if the business purpose for the restraint could have been achieved by less restrictive means.[3] The juries rendered—and the circuit courts upheld—opposite verdicts. Thus, the same restraint—imposed by the same defendant—that was found in a Maryland federal court to have violated the federal antitrust laws was found not to have violated those laws in a California federal court.

---

3 In *Mozart*, the Ninth Circuit emphasized that the existence of less restrictive alternatives might not negate the defense if those alternatives were found to be non-feasible or prohibitively expensive. 833 F.2d at 1349-51. The court below gave little, if any, consideration to such factors.

If, under the amorphous "less restrictive alternative" rationale currently being applied by the courts, a supplier can be subject to different verdicts in virtually identical cases, then other suppliers who may impose analogous requirements on their authorized dealers surely find themselves confronted with the same uncertainty in matters that go to the very heart of their distribution systems. The Court should grant certiorari to eliminate this confusion and provide much-needed guidance to the business community.

II. THE COURT SHOULD RECONSIDER THE "LESS RESTRICTIVE ALTERNATIVE" STANDARD IN LIGHT OF CONTEMPORARY ANTITRUST JURISPRUDENCE

The decision below presents this Court with an opportunity to reconsider an issue of major importance: whether the "less restrictive alternative" standard constitutes an unwarranted limitation on a supplier's ability to assert a business justification defense to an alleged tying restraint when, as here, that restraint is imposed upon a dealer network (and not upon consumers), bears a reasonable relationship to the supplier's legitimate, pro-competitive commercial objectives, and does not impair the free choice of consumers.[4]

In a series of decisions between 1947 and 1969, this Court routinely condemned tying arrangements as lacking any redeeming competitive virtues.[5] While the Court had grudgingly

---

4 This Court has recognized that consumer welfare is the primary objective of the antitrust laws. *See, e.g., National Collegiate Athletic Ass'n* v. *Board of Regents of the Univ. of Okla.*, 468 U.S. 85, 107 (1984) (consumer welfare is the "fundamental goal" of antitrust law); *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 343 (1979) ("Congress designed the Sherman Act as a 'consumer welfare prescription.' ").

5 *See, e.g., Fortner Enters., Inc.* v. *United States Steel Corp.* ("*Fortner I*"), 394 U.S. 495, 503 (1969); *United States* v. *Loew's Inc.*, 371 U.S. 38, 44 (1962); *Standard Oil Co.* v. *United States* ("*Standard Stations*"), 337 U.S. 293, 305-06 (1949) ("Tying agreements serve hardly any purpose beyond the suppression of competition."); *International Salt Co.* v. *United States*, 332 U.S. 392, 396 (1947).

acknowledged the possibility of a business justification defense to a tie-in claim, it never upheld the defense when proffered, and suggested that "tying arrangements generally serve no legitimate business purpose that cannot be achieved in some less restrictive way." *Fortner Enters., Inc.* v. *United States Steel Corp.* ("*Fortner I*"), 394 U.S. 495, 503 (1969).[6]

In contrast to these earlier cases, this Court's more recent tying decisions reflect a willingness to consider actual market factors in determing whether a tie-in has truly had a deleterious effect on competition. *Jefferson Parish Hosp. Dist. No. 2* v. *Hyde*, 466 U.S. 2, 16 (1984) (tying arrangement should be proscribed only when shown to have "a substantial potential for impact on competition"; "we have refused to condemn tying arrangements unless a substantial volume of commerce is foreclosed thereby"); *United States Steel Corp.* v. *Fortner Enters., Inc.* ("*Fortner II*"), 429 U.S. 610, 620-21 (1977) ("[T]he question is whether the seller has some advantage not shared by his competitors in the market for the tying product. Without any such advantage differentiating his product from that of his competitors, the seller's product does not have the kind of uniqueness considered relevant in the prior tying-clause cases.").[7]

Thus, the Court now recognizes the need to consider market factors, including market efficiency justifications, when analyzing the legality of tying arrangements. Certainly, it has stressed such factors in assessing the legality of other non-price vertical

---

6 *See also Standard Stations*, 337 U.S. at 306 (protection of goodwill is a valid justification only when specifications for tied product are so detailed that they can not be practically supplied); *International Salt Co.*, 332 U.S. at 397-98 (justification rejected when competitors could produce comparable goods pursuant to specifications); *IBM Corp.* v. *United States*, 298 U.S. 131, 138-40 (1936) (justification rejected when competing suppliers could meet specifications).

7 *See also Jefferson Parish*, 466 U.S. at 41-42 (concurring opinion) (a court's decision "should depend upon the demonstrated economic effects of the challenged agreement. . . . A tie-in should be condemned only when its anticompetitive impact outweighs its contribution to efficiency.").

restraints. *See Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S. 752, 762-63 (1984) ("In *Sylvania* we emphasized that the legality of arguably anticompetitive conduct should be judged primarily by its 'market impact.' "); *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 51, 54-59 (1977).

When, as here, an alleged tying restraint impacts only on a supplier's authorized dealer network, is reasonably related to legitimate business objectives, and does *not* restrict the ability of the consumer to deal with alternative outlets for the products or services involved, there is simply no reason to allow a search for hypothetical alternatives to control or obscure the competitive inquiry. *Cf. Sylvania*, 433 U.S. at 58 n.29 (whether nonprice vertical restraint was the least or most restrictive provision that supplier could have adopted is *not* dispositive in assessing the competitive effects of the restraint). Accordingly, this would be an appropriate time for the Court to reconsider whether, in light of contemporary antitrust jurisprudence, a "less restrictive alternative" rationale may properly be invoked to deprive a supplier of an otherwise valid business justification defense.[8]

---

8 Although the court below attached little significance to *Pick Mfg. Co.* v. *General Motors Corp.*, 80 F.2d 641 (7th Cir. 1935), *aff'd per curiam*, 299 U.S. 3 (1936), it acknowledged that that decision could properly be viewed as "an early example of a possible business justification defense." (App. at 12a, n.11.)

CONCLUSION

For the reasons set forth above, Automobile Importers of America, Inc. and Motor Vehicle Manufacturers Association of the United States, Inc. urge that the petition for a writ of certiorari be granted.

Respectfully submitted,

Ira M. Millstein
Counsel of Record

Irving Scher
Michael A. Epstein
Martin S. Hyman
Holly J. Gregory
WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Counsel for Amici Curiae

Charles H. Lockwood, II
AUTOMOBILE IMPORTERS
OF AMERICA, INC.
1725 Jefferson Davis Highway
Suite 1002
Arlington, Virginia 22202
(703) 979-5550

William H. Crabtree
MOTOR VEHICLE MANUFACTURERS
ASSOCIATION OF THE UNITED STATES, INC.
300 New Center Building
Detroit, Michigan 48202
(313) 872-4311

Of Counsel

April 18, 1988